IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-932

STEVE LEKOMETROS,
Petitioner,

vs.

UNITED STATES OF AMERICA.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITIONER'S REPLY BRIEF

ARGUMENT

The Solicitor's argument that the selective shutting off of the recording mechanism was merely an attempt to "minimize" the wiretapping in accordance with the statute (Brief in Opposition, p. 12) demonstrates a total misunderstanding of what actually took place in the instant wiretap procedure. As Agent Cunningham testified (Tr. 310-311), the **entire** conversations were inter-

cepted and overheard, but only parts of these conversations were recorded. In other words, the interception was not minimized—only the electronic recordation was minimized. The statute itself is very clear in requiring that telephone conversations which are in fact intercepted **shall** (if possible) be recorded, 18 U.S.C. 2518 (8) (a).

If the agents had truly made a reasonable attempt to minimize interception, as the government contends, they would have simply terminated the interception of any conversation which was unrelated to gambling. Instead, the agents continued to intercept and overhear such conversations, but deliberately failed to record same. The result, of course, was fragmentary electronic recordations which contained only what the agents wanted them to contain, and which was only brought to light, for the first time, when Agent Cunningham testified during the trial.

The government's own brief on this point further illustrates the immediate need for Supreme Court clarification to prevent added confusion in this field, and to make clear the distinction between interception of telephone conversations and recordation of same. This distinction apparently is not presently recognized by the government, but is one which should be carefully defined and preserved because of the specific and different statutory requirements: interception should be minimized, but recordation must be maximized. Both requirements are included in the statutory scheme for the obvious protection of individual rights, and neither should be ignored.

Respectfully submitted

MERLE L. SILVERSTEIN
STANLEY M. ROSENBLUM
ROSENBLUM and GOLDENHERSH
7777 Bonhomme, Suite 1414
Clayton, Missouri 63105
Attorneys for Petitioner